STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of COURISSA LANISE CLARK, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LAWRENCE BOYD,

Respondent-Appellant.

UNPUBLISHED
June 20, 2000

No. 220438
Wayne Circuit Court
Family Division
LC No. 97-362184

Before: Hoekstra, P.J., and Cavanagh and White, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (c)(i), (g), (j) and (k); MSA 27.3178(598.19b)(3)(b)(i), (c)(i), (g), (j) and (k). We affirm.

One of the witnesses at the termination hearing was the child's mother. Because the mother was unable to speak or hear, her examination was conducted through written questions. Respondent argues that he was denied a fair trial because the trial court changed or rephrased some of the questions her attorney had submitted for the mother to answer. Respondent contends that the trial court's changes impermissibly interfered with her right to examine the witness. We find no merit to respondent's argument.

The court apparently required that all questions for the witness be submitted in writing because the witness could not hear or speak, and could only communicate through writing. When the court changed or rephrased certain questions, it was merely attempting to reword questions it found confusing or unclear. Indeed, respondent's counsel assented to, or actually proposed, many of the changes to the questions. The effect of these changes did not deprive respondent of his right to examine the witness to

establish bias, prejudice, or lack of credibility. See, e.g., *People v Cunningham*, 215 Mich App 652, 657; 546 NW2d 715 (1996).

Next, respondent argues that his trial attorney was ineffective for not obtaining a copy of the child's mother's prior testimony from the criminal proceedings for use in impeaching the mother at the termination proceeding. Because respondent did not raise this issue in the trial court or by motion to remand in this Court, appellate review is foreclosed unless the alleged deficiencies are apparent from the record. *People v Wilson*, 196 Mich App 604, 612; 493 NW2d 471 (1992); *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1989).

The test for ineffective assistance of counsel in criminal matters is applied to termination proceedings. *In re Rogers*, 160 Mich App 500, 502; 409 NW2d 486 (1987). In order for this Court to reverse due to ineffective assistance of counsel, respondent must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced him that he was denied the right to a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). To establish prejudice, respondent must show that there was a reasonable probability that, but for counsel's alleged error, the result of the proceeding would have been different. *People v Johnnie Johnson, Jr*, 451 Mich 115, 124; 545 NW2d 637 (1996). It is incumbent on respondent to produce factual support for his claim of ineffective assistance of counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Even assuming that counsel was deficient for not obtaining the necessary transcripts, respondent has not shown that he was prejudiced by the deficiency. Specifically, respondent has not demonstrated that, had the transcripts in question been available, the witness' credibility would have been impeached. Therefore, respondent has not satisfied the test for ineffective assistance of counsel. Further, respondent's rights were terminated on several grounds, some of which were not based on the child's mother's testimony.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Helene N. White